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IN THE

Supreme Court of the United States

October Term, 1973

No. 73-1425

COMMONWEALTH OF PENNSYLVANIA,
Petitioner,

v.

PETER ERLING PLATOU,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

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Respondent prays that the writ of certiorari to review the judgment entered by the Supreme Court of Pennsylvania petitioned for by the District Attorney of Crawford County on behalf of the Commonwealth of Pennsylvania, be denied for the reasons hereinafter set forth.

Opinions Below

The Opinion of the Court of Common Pleas of Crawford County, Criminal Division, at No. 48 May Sessions, 1970 (Pet. App. 18-30) is not reported. The Order of the Superior Court of Pennsylvania is reported at 220 Pa. Superior Ct. 779, 286 A.2d. 402 (1972). The Opinion of the Supreme Court of Pennsylvania (Pet. App. 5-13) is reported at 455 Pa. 258, 312 A.2d. 29 (1973).

Jurisdiction

The Commonwealth of Pennsylvania seeks to invoke the jurisdiction of this Court under 28 U.S.C. § 1257(3).

Constitutional Provision and Statute Involved

Pa. Const., art. I, § 8:

The people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures, and no warrant to search any place or to seize any person or things shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation subscribed to by the affiant.

28 U.S.C. § 1257:

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

. . .

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

Questions Presented

1. Does this Court have jurisdiction of this case where the decision of the Supreme Court of Pennsylvania is based on an adequate and independent state ground?

2. Does this case present any special and important reasons for review by this Court?

Statement

Respondent Peter Erling Platou was arrested and charged with possession of marijuana. A pre-trial application to suppress evidence was denied by the Court of Common Pleas, Criminal Division, Crawford County, Pennsylvania. Thereafter following a non-jury trial by that court, he was convicted and sentenced to pay a $500.00 fine and undergo two years probation. (Pet. App. 32-33). On appeal to the Superior Court of Pennsylvania this judgment was affirmed by a *per curiam* order without opinion. *Commonwealth v. Platou*, 220 Pa. Superior Ct. 779, 286 A.2d. 402 (1972). The Supreme Court of Pennsylvania granted *allocatur* and reversed and remanded the case for a new trial, holding that evidence was obtained from Platou in violation of his right under the Pennsylvania and the United States Constitutions to be secure from unreasonable searches and seizures. *Commonwealth v. Platou*, 455 Pa. 258, 312 A.2d. 29 (1973). (Pet. App. 5-13).

ARGUMENT

1. The decison of the Supreme Court of Pennsylvania is based upon an adequate and independent state ground.

This Court, since *Murdock v. City of Memphis,* 87 U.S. (20 Wall.) 590, 636 (1874), has consistently adhered to the principle that it does not have discretionary jurisdiction to review the judgment of a state court when that judgment is based on an adequate and independent state ground, even where such a judgment may also decide a federal question. *Henry v. Mississippi,* 379 U.S. 443, 446 (1965), reh. den. 380 U.S. 926 (1965).

The Opinion of the Supreme Court of Pennsylvania is based on such an adequate and independent state ground since it is clearly grounded just as much on Article I, Section 8 of the Pennsylvania Constitution as on the United States Constitution. In footnote number 2 to the Opinion, citing the Constitutional provisions relied upon, the Supreme Court of Pennsylvania states: ". . . Our discussion of the Fourth Amendment is also applicable to the state constitutional provision." Throughout the Opinion, references to Pennsylvania cases and the Pennsylvania Constitution parallel references to federal cases and the United States Constitution. Since the Pennsylvania Supreme Court has interpreted Article I, Section 8 of the Pennsylvania Constitution as requiring its holding in this case, there is an adequate state basis for the decision reached that is entirely independent of any interpretation of the United States Constitution.

2. No special and important reason has been advanced for granting certiorari.

The Commonwealth of Pennsylvania, Petitioner herein, has stated no reason which would appear to qualify this case for review under the provisions of Rule 19 of this Court.

Petitioner states, without citing any cases for the proposition, that the Courts of Appeals for the various circuits are divided on this particular issue (Pet. 3).

Respondent submits that there is no such division on the question involved in this case. Assuming, *arguendo*, that such division did exist, however, it would seem more appropriate to review a decision from one of the Courts of Appeals wherein a federal question is unambiguously raised rather than to review the decision of a state court which advances as a separate ground for its holding an authoritative interpretation of its own state constitution.

Petitioner also suggests review of this Court will inform police officers of their rights and privileges in executing search warrants (Pet. 3). The police of Pennsylvania have been so informed by their Supreme Court, and the police of other states are similarly guided by their own state courts. If guidance is to be supplied to federal officers, we respectfully submit that it can better be supplied in the context of a federal case advanced through the federal court system.

Petitioner finally argues that the courts of Pennsylvania are divided because the Superior Court affirmed and the Supreme Court reversed (Pet. 4). This argument erroneously ascribes a parity to the two courts, whereas, in fact:

"The Supreme Court (a) shall be the highest court of the Commonwealth and in this court shall be reposed the supreme judicial power of the Commonwealth . . ." Pa. Const. art. 5, sec. 2(a).

Conclusion

For the reasons stated it is respectfully submitted that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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